

97CV05553-EHN-MO

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TRINA ANDRIOTTY, JOHN CHIQUITUCTO,  
SYLVIA CIPRIANA, CHANNON GAONA,  
JERRY GOGLAS, JESSICA GRAUER,  
JUSTIN HOLLOWAY, DAVID LEATH, TED  
MARTINEZ, JASON MORALES, NEAL BRANDON,  
ENID NIEVES, MICHAEL O'KEEFE,  
ANTHONY ORTIZ, RENA REID, JULIO  
SERRATA, MIRIAM RIERA, ANNETTE RIOS,  
JAMES RIOS, ALEX SANCHEZ, MYRA  
SANTIAGO, JENNIFER SAREE, VANESSA  
SEMONELLA, PATRICIA TORRES, ALBERTO  
ACEVEDO,

Plaintiffs,

-against-

SUFFOLK COUNTY, SUFFOLK COUNTY POLICE  
DEPARTMENT, SUFFOLK COUNTY CIVIL  
SERVICE, Police Commissioner PETER  
GALLAGHER, BRIAN K. BUGGE, MARTIN RABER,  
PETER COSGROVE, County Executive  
ROBERT GAFFNEY, ROBERT GABRIEL, ALAN  
SCHNEIDER,

Defendants.

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DICKERSON & REILLY  
(Bradford D. Conover, of counsel)  
780 Third Avenue  
New York, NY 10017  
for plaintiffs

LOUIS ALEXANDER ZAYAS, ESQ.  
300 Park Avenue, Suite 1940  
New York, NY 10022

97 cv 5553

MEMORANDUM  
AND  
ORDER

cm

for plaintiffs

ROBERT J. CIMINO, Suffolk County Attorney  
(Robert H. Cabbie, Theodore D. Sklar, of counsel)  
North County Complex, Bldg. 158  
725 Veterans Memorial Highway  
Hauppauge, NY 11787  
for defendants

CERTILMAN BALIN ADLER & HYMAN  
(Neil H. Angel, of counsel)  
90 Merrick Avenue  
East Meadow, NY 11554  
for defendants Martin Raber and Robert Gabriel

NICKERSON, District Judge:

Plaintiffs, 25 African-American, Latino, and female police service aides, brought this action for declaratory and injunctive relief, and for money damages pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1981, 1983, 1985(3), 1986, as well as for breach of contract, against defendants Suffolk County, its Civil Service, Police Department, and certain of its officers.

Individual defendants Martin Raber (Raber), a police inspector, and Robert Gabriel (Gabriel), a deputy police inspector, move to dismiss the complaint for failing to state a cause of action against them, or

alternatively for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure.

Plaintiffs oppose the motion to dismiss, and alternatively request leave to amend the complaint. In a separate motion plaintiffs move to amend the complaint to include causes of action under Title VII of the Civil Rights Act of 1964, 42 U.S.C.

§ 2000e-2, and Section 296 of New York's Executive Law, N.Y. Exec. Law § 296. Defendants do not oppose that motion.

Plaintiffs claim, in substance, that they were denied promotion to the position of police officers. They also seek enforcement of a 1986 consent decree that requires the Suffolk County Police Department (the Police Department) actively to recruit minorities.

The complaint sets forth the following facts. As a result of the consent decree Suffolk County established a two-and-a-half-year Cadet Program in 1994. The purpose of the program was to prepare minority students matriculated at Suffolk Community College to become police officers. The Police

Department and plaintiffs executed a written employment contract that provided that if plaintiffs attained their degree in criminal justice, passed the Police Officers Examination (the Examination) with a score of at least 70%, and met all department qualifications, they would be promoted to the position of Suffolk County police officers. Plaintiffs' names were placed on a list providing for automatic promotion (the Promotional List) so long as the conditions were satisfied rather than on a competitive list.

The Examination consisted of one biographical and two cognitive sections. The complaint says that the biographical section of the Examination showed racial, cultural and sexist bias because it was written with a white male profile in mind. Plaintiffs say that defendants induced them to enroll in a special course to prepare them to pass the Examination (the Preparatory Course), and specifically instructed them how to answer the questions in the biographical section.

The complaint says that the Preparatory Course was taught at various times since 1988 by defendants Bugge, a police sergeant, and deputy police inspector Gabriel. It says that in March 1996 police inspector Raber spoke at the first Preparatory Course lecture attended by plaintiffs. It says that Raber told plaintiffs the Examination was unfair to minorities and advised them to answer the questions on the biographical section of the Examination consistently with the profile of a white male. Plaintiffs followed the recommendations of Raber, Bugge, and other Police Department officers and gave false answers to the biographical section of the Examination. They were subsequently denied promotion to the position of police officers.

The complaint says that plaintiffs took the Examination in June 1996, but that certain defendants conspired to delay issuing the results until the Promotional List expired in October 1996. Defendants then hired 30 new police officers, of whom 25 were white. At the time of the complaint plaintiffs were

still employed by Suffolk County as police service aides.

The complaint was filed on September 24, 1997. The applicable statute of limitations for actions brought under 42 U.S.C. §§ 1981, 1983, and 1985 in New York is three years. See Murphy v. Lynn, 53 F.3d 547, 548 (2d Cir. 1995) (three-year period of limitations for § 1983 actions); Tadros v. Coleman, 898 F.2d 10, 12 (2d Cir. 1990) (three-year period of limitations for § 1981 actions); Singleton v. City of New York, 632 F.2d 185, 189 (2d Cir. 1980) (three-year period of limitations for § 1985 actions). The applicable statute of limitations for actions brought under 42 U.S.C. § 1986 in New York is one year. See 42 U.S.C. § 1986 ("no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued").

The allegations concerning Gabriel say that he taught the preparatory course "at various times since 1988" and that he "knew or reasonably should have known that the use and endorsement of the aforementioned SCPD

preparatory course was unlawful and specifically violated the [consent] Decree." The complaint does not allege that Gabriel taught the Preparatory Course attended by plaintiffs in 1996, or that he had anything to do with the June 1996 Examination. Plaintiffs do not allege any specific wrongdoing by Gabriel with regard to earlier preparatory courses, nor do they say that he was a signatory to the employment contract with plaintiffs upon which the breach of contract claim is premised.

The complaint does allege that Raber addressed plaintiffs at the 1996 Preparatory Course and told them the Examination was unfair to minorities and that they "needed to provide responses consistent with the profile of a white male" on the biographical section of the Examination. Raber argues that the allegations against him are conclusory, and that they fail to establish what constitutional rights of the plaintiffs he infringed.

The complaint also alleges supervisory liability against both Raber and Gabriel for failing to guard

against the conduct of sergeant Bugge. Plaintiffs were issued with right to sue letters from the Equal Employment Opportunity Commission on February 18, 1998.

As noted above, Raker and Gabriel move to dismiss the complaint, or alternatively for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure. Plaintiffs oppose the motion, or alternatively move to amend the complaint.

Plaintiffs submit a proposed amended complaint that adds a claim for relief under Title VII, a claim for relief under section 296 of New York's Executive Law, and various allegations concerning Gabriel. The proposed amended complaint says that Gabriel was a member of the committee responsible for developing the biographical portion of the Examination, and that he used the test and answers to lecture to certain white candidates. The amended complaint does not say whether Gabriel conducted these lectures at any time after 1994. It also says that Gabriel is facing police administrative charges in connection with his role in the Preparatory Course. The court will grant

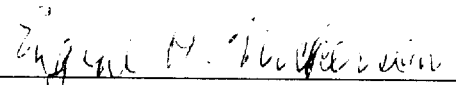


plaintiffs leave to file the proposed amended complaint.

Gabriel and Raber's motion to dismiss the original complaint is denied. Plaintiffs' motion for leave to amend the complaint is granted.

So ordered.

Dated: Brooklyn, New York  
August 14, 1998

  
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Eugene H. Nickerson, U.S.D.J.